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No. 87-1432

Supreme Court, U.S.

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In The  
**Supreme Court of the United States**  
October Term, 1987

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A.C., A.C., S.C., S.C., and J.C.,  
*Petitioners*

vs.

STATE OF IOWA  
*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF IOWA  
BRIEF IN OPPOSITION TO  
PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF IOWA**

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## **QUESTIONS PRESENTED**

I. Did the Iowa Supreme Court err in ruling that the trial court acted properly when it approved the removal of five children from the foster home which was disruptive of their relationship with their biological parent.

II. Did the Iowa Supreme Court disregard principles of federal law concerning the rights of persons in the custody of the State.

III. Does this case present a context for exercise of the United States Supreme Court's supervisory powers.

**PARTIES**

The petitioner in this matter is the former guardian ad litem of five children who have been subject to Iowa child in need of assistance proceedings. The guardian ad litem represented the children through several years of such proceedings and was ultimately successful in obtaining the termination of their mother's parental rights. The rights of the fathers were not terminated as they were not properly served. On February 17, 1987, the petitioner, Ms. Harlan, was removed as guardian ad litem by the trial court, which found that her representation was harmful to the children. (Iowa Supreme Court App. 939.)

Accordingly, the parties in this matter are the former guardian ad litem, the State of Iowa, and, at least nominally, the three natural fathers whose rights have not been terminated.

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**JURISDICTION**

The respondent accepts the jurisdictional statement prepared by the petitioner. (Petition, p. 2.)

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

The Fourteenth Amendment to the Constitution of the United States, section 1, states:

All persons born or naturalized in the United States, and



subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Iowa Code section 232.102(6) (1985) states:

In any order transferring custody to the department or any agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian or custodian in order to enable them to resume custody of the child.

441 Iowa Administrative Code 7.5(5) states, in part:

Where no hearing is granted. No hearing will be granted

on the following issues:

\* \* \*

d. The removal of children from or placement in a specific foster care setting.

\* \* \*

### STATEMENT OF CASE

This matter began with child abuse investigations in 1984 and 1985. Allegations were made that K.C. was abusing and neglecting her children A.C.1, A.C.2, S.C.1, S.C.2 and J.C. Investigations revealed that K.C. had mental health problems and did not provide adequate shelter or food for the children. She let them wander about unsupervised and improperly clothed, and, on at least one occasion, physically abused one of them. (Iowa S.Ct. App. 12-13, 17.)

The children were voluntarily placed in foster care on March 22, 1985, in the home of L.M. and P.M. (Iowa S.Ct. App. 3.) A child in need of (CHINA) assistance petition was filed that day alleging that K.C. failed to adequately supervise her children, or provide them with adequate food, clothing and shelter. (Iowa S.Ct. App. 3.) The petition was later amended to add the additional CHINA grounds of physical abuse, and of the parent desiring to be relieved of the children's care. (Iowa S.Ct. App. 7-8.) K.C., meanwhile, was admitted to the mental health unit at a local hospital.

About two weeks after the foster care placement, K.C. wrote a letter requesting that her children be returned when she was released from the hospital. (Iowa S.Ct. App. 3-4.) An application for temporary removal was filed in response to that request. (Iowa S.Ct. App. 3.) In the first court order in this matter, Judge Thomas Mott granted that application, finding that K.C. continued to require hospitalization, and had lost her home during her hospital stay. (Iowa S.Ct. App. 25-26.)

At the temporary removal hearing there was a dispute over visitation. The Department of Human Services felt visitation would be safe and should occur. (Iowa S.Ct. App. 17.) The guardian ad litem stated that the children didn't want visitation and felt it should not be forced. (Iowa S.Ct. App. 18-19.) The court declined to interfere with the Department's discretion in this matter, noting that it was wary of being manipulated by the children's expressed wishes. (Iowa S.Ct. App. 20.)

The CHINA adjudication hearing was held on May 13, 1985. (Iowa S.Ct. App. 27.) An order was issued four days later. (Iowa S.Ct. App. 54.) In the order Judge Mott found that there were five C. children, aged five months to ten years. (Iowa S.Ct. App. 54.) He found that they had been neglected, abused, and inadequately supervised and sheltered. (Iowa S.Ct. App. 55-56.)

The dispositional hearing was held in June of 1985. Before the hearing, the Department of Human Services filed a dispositional report which was later admitted into evidence. (Iowa S.Ct. App. 58.) It noted that K.C. had transferred to the Center for Personal Development in Ames, Iowa. (Court Report of 6/5/85, p. 1.) It was anticipated that she would require care there for an extended period of time. (Court Report of 6/5/85, p. 1.) The report stated that the children's natural fathers had shown no interest in gaining custody of the children. (Court Report of 6/5/85, p. 1.) Social worker Kathy Thompson recommended foster care. (Court Report of 6/5/85, pp. 1-2.) At the hearing all the parties concurred with this recommendation, and the court entered an order accordingly. (Iowa S.Ct. App. 58-59.) At this time the two oldest girls were displaying hostility towards their mother, and towards reunification. (Court Report of 12/13/85, p. 1.) K.C. was making "excellent" progress in her placement in Ames. (Court Report of 12/13/85, p. 2.)

On January 6, 1986, after a December 16, 1985 review hearing, Judge Mott issued an order approving continued foster care. (Iowa S.Ct. App. 67-68.) Just prior to the hearing the guardian ad litem had filed a motion to modify the dispositional order so as to remove the Department as custodian of the children. (Iowa S.Ct. App. 65.) The motion was based on the Department's insistence on the maintenance of visits with the natural mother, and the goal of reunification. (Iowa S.Ct. App. 65.) The motion was apparently dropped. (Iowa S.Ct. App. 614-615.)

The next six-month review hearing was scheduled for July of 1986. Before the hearing, Psychologist Rex Shahriari filed a report. His report contained the first hints of the developments that would change the nature of this case. Dr. Shahriari had examined the records and evaluations of this case, and conducted a three-hour visit with the children at the home of the foster parents. (Iowa S.Ct. App. 980.) He was positively impressed with the foster home. (Iowa S.Ct. App. 981.) He found that the home more than adequately met the children's material and physical needs. (Iowa S.Ct. App. 981.) There was a significant bonding between the foster parents and the children. (Iowa S.Ct. App. 981.) However, Dr. Shahriari also noted that the foster parents discussed K.C.'s competence as a parent in "open and frank" discussions with the children. (Iowa S.Ct. App. 981.) He stated that the foster parents showed questionable judgment in this regard, and that their comments regarding K.C.'s competency "has and will continue to cause them anxiety, mistrust and fear of their biological parent". (Iowa S.Ct. App. 981.) He opined that the foster parents had, perhaps unwittingly "berated" K.C., "with the net effect being that the chances of the children having a positive relationship with their biological mother is reduced". (Iowa S.Ct. App. 982.) He noted that the "openness and frankness" of the discussions seemed to be "circumscribed to [K.C.'s] in-

adequacies" (Iowa S.Ct. App. 982), and that during the discussions, the oldest children were very quiet and attentive and tended to echo the foster parents' opinions. (Iowa S.Ct. App. 982.)

At this time K.C. was attempting to decide whether to join a residential program in Cedar Rapids, Iowa, designed to lead to independent living. (Iowa S.Ct. App. 977.) Social Worker Kathy Thompson stated that if K.C. did not join the program, she would be provided with numerous services designed to aid in the return and transition of the children to the home. (Iowa S.Ct. App. 977.) At this time, increased visitation with the children was occurring. (Iowa S.Ct. App. 977.)

At the July 28, 1986 hearing, the court continued the children's placement in foster care, and set the matter for another review in six months. (Iowa S.Ct. App. 69-70.)

That hearing was precluded by several developments occurring in September of 1986. On September 15, 1986, the Department of Human Services sent a "10 day notice" terminating the children's placement with the foster parents. The placement was being terminated because of a lack of cooperation with the case plan, and because the children's best interest demanded placement elsewhere. (Iowa S.Ct. App. 75.)

The children's guardian ad litem filed an "application for temporary injunction, termination of parental rights, and rehearing as to disposition". (Iowa S.Ct. App. 71.) The application alleged that the Department of Human Services had engaged in emotional and psychological abuse of the children by repeatedly "threatening" them that they would eventually return to the care of the natural mother. (Iowa S.Ct. App. 72.) The application alleged that the children were best off in the care of the foster parents, who would eventually seek to adopt them. (Iowa S.Ct. App. 73.) The application requested, inter alia: (a) a restraining order preventing the Department from

moving the children; (b) a transfer of custody from the Department to the foster parents; (c) permission for the guardian ad litem to seek a termination of parental rights. (Iowa S.Ct. App. 73-74.) The application was followed shortly by a brief stating that "leading experts on the subject of child custody and placement feel that bonding between foster children and long-term caretakers should be legally recognized as a common law adoption, and should not be disrupted within the standards of the court's protection of the best interests of the children." (Iowa S.Ct. App. 77.)

The attorney for the natural mother resisted the application for an injunction. (Answer and Resistance filed 9/15/86.) The resistance stated that continued placement in the home of the foster parents may not be in the best interests of the children, and that the foster parents had been aware of concerns over the placement since early 1986. (Answer and Resistance filed 9/15/86.) In the resistance the natural mother also requested a hearing to determine if the guardian ad litem should be disqualified. (Answer and Resistance filed 9/15/86.) The natural mother alleged that the commonly accepted goal of the juvenile court is the reunification of the family, and that the guardian ad litem had indicated very early on in the case that her goal was termination of parental rights. (Answer and Resistance filed 9/15/86.) She alleged that the actions of the guardian ad litem were biased in favor of the current foster parents. (Answer and Resistance filed 9/15/86.)

The application for a temporary injunction came on for hearing on September 26, 1986. A teacher of one of the children stated that removal from the placement might cause the children emotional harm. (Iowa S.Ct. App. 99.) A school nurse said the children were receiving better care now than they were in their natural mother's care. (Iowa S.Ct. App. 108.)



Psychologist Eva Christiansen, who evaluated the children, testified on behalf of the children. When asked if the Department of Human Services' threat to remove the children was a good action, she stated, "It may not be a good action. It may be a necessary action". (Iowa S.Ct. App. 118.) She stated that the case was at a point where a decision had to be made to remove or keep the children. (Iowa S.Ct. App. 125.) Dr. Christiansen stated that she had met with the foster parents in late 1985 or early 1986 regarding their foster parent role. (Iowa S.Ct. App. 122.) She said they had been startled by her recommendations as how to proceed, especially as to cooperating with the Department. (Iowa S.Ct. App. 122, 131.) Dr. Christiansen stated that she had become aware "really immediately" that the foster parents were interested in maintaining a permanent parental role for the children. (Iowa S.Ct. App. 123.) She stated that, ethically, the only way she could work with them in therapy was to work with them on their goal. (Iowa S.Ct. App. 124.) Thus, she recommended cooperation with the parent and the Department, so that if termination did occur they would be the persons most likely to get the children. (Iowa S.Ct. App. 124.) Dr. Christiansen described the foster parents' negative feelings towards the natural mother and described their relationship with the children. (Iowa S.Ct. App. 128.) Dr. Christiansen stated that there were certain aspects of that relationship that were tighter than that of a normal parent-child relationship. (Iowa S.Ct. App. 130.) She attributed this to the desperation of the children for a normal family life, and to foster parents' willingness to offer that sort of relationship, a willingness that not only went beyond what one would want in successful foster parenting, but also went beyond what one would want in successful parenting. (Iowa S.Ct. App. 129-130.) She stated that there was an aspect of mutual desperation in the relationship (Iowa S.Ct. App. 129), and that that relationship interfered with the children's ability to reunite

with the mother. (Iowa S.Ct. App. 132.)

Dr. Rex Shahriari, who had submitted the earlier report, also testified. He reiterated his concerns regarding the effect the foster parents were having on reunification efforts. He stated that during his visit to the foster home there had been "quite a bit of berating" of the natural mother, and much reiteration and commenting upon her past behavior. (Iowa S.Ct. App. 184.) He felt this created considerable anxiety for the children. (Iowa S.Ct. App. 184.) He stated that if this berating was of an ongoing nature, it would reduce the possibility of the children having a positive relationship with their mother. (Iowa S.Ct. App. 185.) When asked if the foster parents would have a motivation for harming this relationship, he speculated that if there was a desire to adopt the children, the probability of adoption would increase if a wedge could be driven between mother and children (Iowa S.Ct. App. 186.) He testified that despite the foster parents' lack of psychological training, it would not be unrealistic to be able to expect them to be able to separate their feelings so a positive image could be projected of the mother. (Iowa S.Ct. App. 189.)

L.M., foster father, testified. He denied saying bad things about K.C. to the children. (Iowa S.Ct. App. 193-194.) He conceded that he would like to adopt them. (Iowa S.Ct. App. 194-195.) He stated that the children had a negative attitude towards K.C. from the first day of placement, and had always called the foster parents mom and dad. (Iowa S.Ct. App. 203.) He testified regarding his two recent arrests on operating while intoxicated charges. (Iowa S.Ct. App. 124.)

P.M., the foster mother, testified. She stated she would like to keep the children. (Iowa S.Ct. App. 217.) She stated that she encouraged a positive image of the biological mother and that even if she were able to adopt the children, she would not cut the mother out of their lives. (Iowa S.Ct. App. 218.)



On October 1, 1986, the application to enjoin the children's custodian from placing the children outside the M. home was denied. (Iowa S.Ct. App. 235.) On October 2, 1987, the natural mother filed a motion to dismiss the petition to terminate parental rights, the motion being predicated on the fact that, under Iowa law, a guardian ad litem is not authorized to file a petition to terminate parental rights. (Iowa S.Ct. App. 236.) On October 14th, the court retroactively authorized the guardian ad litem to file a petition, holding that her contentions should be resolved on the merits. (Iowa S.Ct. App. 240-241.)

A hearing date was set for the motion to terminate parental rights. Prior to the hearing, the attorney for the natural mother moved that the hearing be closed because of the extensive publicity the case had engendered. (Motion filed 12/1/86.) The guardian ad litem responded that the children had enjoyed the publicity and requested that the hearing remain open. (Resistance filed 12/3/86.) On December 9, 1986, the court ruled that the hearing would be open because there is no statutory authorization for closing termination proceedings under Iowa law. (Iowa S.Ct. App. 296.)

The termination hearing was held on December 12, 1986. (Iowa S.Ct. App. 313.) Testifying on behalf of the children, was John Frederick Tedesco of the Des Moines Child Guidance Center in Des Moines. Mr. Tedesco apparently had no contact with the children or mother. (Iowa S.Ct. App. 338.) He testified generally regarding bonding and its importance. (Iowa S.Ct. App. 324-325, 327.) He stated that even if bonding with a foster parent did occur, rebonding with a natural parent could occur. (Iowa S.Ct. App. 335.) He testified that he felt Department of Human Services' regulations did not address very well the situation where the natural parent ceases to be a real parent, and ties have been developed with "new" parents. (Iowa S.Ct. App. 338.) He felt that the regulations did

not deal very well with the prospect of long term placements (Iowa S.Ct. App. 329), and were written from an adult point of view. (Iowa S.Ct. App. 329.)

Larry Lloyd, A.C.2's teacher, testified. He stated that A.C.2 used the last name of M. in school. (Iowa S.Ct. App. 353.) He said she was unhappy about the prospect of being moved from the M. home. (Iowa S.Ct. App. 349-350.)

Psychologist Eva Christiansen testified again at the termination hearing. She said that she had met with K.C. for an hour in October, and K.C. had asked her whether she should pursue reunification with the children. (Iowa S.Ct. App. 364.) Dr. Christiansen had told K.C. that she felt that it would be harmful if she did not. (Iowa S.Ct. App. 365.) Dr. Christiansen testified that, for a variety of reasons, she felt that termination would be a harmful course of action to pursue. (Iowa S.Ct. App. 369.) One reason was the children's need to come to affectionate, endearing terms with the natural parent, a need which had not been met here. (Iowa S.Ct. App. 369.) Dr. Christiansen testified that it is not uncommon for children to be bitter towards those who had abused them, but neither was it uncommon for them to overcome that bitterness. (Iowa S.Ct. App. 370.) She stated that it would be unfortunate if the children's ability to reconcile the anger and bitterness generated by poor treatment and care were somehow blocked. (Iowa S.Ct. App. 370.) When asked if that was, in fact, what had happened in this case, she said yes. (Iowa S.Ct. App. 371.) When asked directly if she knew of anything the M.'s did to harm the relationship between the children and their mother, she referred to their negative feelings towards the mother. (Iowa S.Ct. App. 362.) She stated that the children needed the support of people who would be neutral with regard to the outcome of the case. (Iowa S.Ct. App. 377.)

Psychiatrist Jerry Lewis, who had treated K.C. since 1984,

testified. He affirmed that K.C. has an illness called bipolar disease. (Iowa S.Ct. App. 385.) Symptoms or manifestations of her disease included poor judgment, hallucinations, and increased energy. (Iowa S.Ct. App. 386.) The disease is cyclical - it comes and goes in cycles and then disappears altogether. (Iowa S.Ct. App. 388.) It is treated with medicine. Dr. Lewis stated that as long as K.C. stays with her medicine, maintains contact with psychiatrists and other treatment, her prognosis could be "pretty good". (Iowa S.Ct. App. 388.) When asked if she could take care of her children, he stated that it was his feeling that there was no psychiatric reason why she could not. (Iowa S.Ct. App. 389.)

Dr. Shahriari testified again in the termination hearing. (Iowa S.Ct. App. 403.) Dr. Shahriari discussed briefly his previous statements about the effect the foster parents were having on the efforts towards reunification. He stated that he had felt there was "an effort, perhaps a good faith effort, to disrupt the hope for reunification with K.C." (Iowa S.Ct. App. 423.) He remarked on the possible inappropriateness of having young children declaring their allegiance in this type of custody dispute, and on the fact that they might feel that by declaring allegiance to the biological parent, they are being disloyal to the foster parent. (Iowa S.Ct. App. 416.)

A.C.1 testified at the termination hearing. She stated that she does not care about K.C. (Iowa S.Ct. App. 455), and she doesn't care if she is better. (Iowa S.Ct. App. 453-455.) She would not cooperate with efforts towards her going back to K.C. (Iowa S.Ct. App. 429, 443.) She would engage in desperate behavior if forced to go back. (Iowa S.Ct. App. 429.) She wanted termination of parental rights. (Iowa S.Ct. App. 437.)

A.C.2's testimony was similar to that of her sister. She wanted termination (Iowa S.Ct. App. 460), and did not believe that K.C. will get better or be a good mom. (Iowa S.Ct. App.

460-462.) Like her sister, she did not approve of the Department of Human Services' efforts towards reunification. (Iowa S.Ct. App. 461.)

P.M., the foster mother, testified. She described the situation leading up to the decision to remove the children. (Iowa S.Ct. App. 477.) There was apparently some sort of dispute with regard to the frequency with which the children called their lawyer. (Iowa S.Ct. App. 478, 489.) She felt that the children were happy and well adjusted in her home. (Iowa S.Ct. App. 480.) She did not believe removal of the children from their home was in their best interests. (Iowa S.Ct. App. 489.) She stated that in the beginning she had a lot of hard feelings and bitterness towards K.C., but she had replaced them with understanding. (Iowa S.Ct. App. 493.) She admitted that it was possible that as early as two weeks into the foster placement she had made statements to fellow employees at work that she was going to keep the C. children. (Iowa S.Ct. App. 501.)

The above-noted witnesses constituted the petitioner's case. At this point the natural mother called her witnesses. Phyllis Murphy-Christiansen, formerly a counselor at the Center for Personal Development in Ames, testified. (Iowa S.Ct. App. 530.) She worked with young adults in order to aid them with independent living. (Iowa S.Ct. App. 531.) She worked with K.C. (Iowa S.Ct. App. 532.) She described K.C. as initially grieving over the loss of her family but then progressing quickly because of her "above-average motivation in the program and in her achievement." (Iowa S.Ct. App. 532.) K.C. was extremely remorseful over the fact that her illness had created a bad situation for the children. (Iowa S.Ct. App. 535.) She was extremely fearful of losing her emotional bond with them. (Iowa S.Ct. App. 535-539.) She was encouraged to trust the promise that the Department had made, that if she fulfilled her goals as far as treatment, she would get her children back.

(Iowa S.Ct. App. 539.) Ms. Murphy-Christiansen stated that K.C. now felt betrayed because of the fact she was now facing termination of parental rights. She also expressed concern that she could never materially provide for her children like the foster parents could. (Iowa S.Ct. App. 548.)

Kathy Thompson, the case's long-time social worker, testified. She recommended against termination of parental rights. (Iowa S.Ct. App. 593.) She stated that this case is unusual "in the course of her employment" because of the progress made by the natural parent. (Iowa S.Ct. App. 631.) She conceded that her goal of reunification was contrary to the stated wishes of the children and the guardian ad litem. (Iowa S.Ct. App. 591-592, 608, 638.)

Ms. Thompson testified regarding the best interests of the children. She stated that, in her opinion, the children's best interests lie outside their current foster home (Iowa S.Ct. App. 275), and in reunification with the natural parent. (Iowa S.Ct. App. 316.) She stated that the "national" goal of social work is the rehabilitation and reunification of families (Iowa S.Ct. App. 318), but that the chief priority remains the best interest of the child. (Iowa S.Ct. App. 327.) She rated K.C.'s motivation to change as real high. (Iowa S.Ct. App. 578.) She stated that, in spite of all the distractions, K.C. had done well. She had not broken under the pressure. (Iowa S.Ct. App. 577.) She had pursued and received future means of financial support. (Iowa S.Ct. App. 577.) She was working on furthering her education. (Iowa S.Ct. App. 577.) She was working on parenting issues both in counseling and in Parents Anonymous. (Iowa S.Ct. App. 577.) Ms. Thompson felt that K.C. was capable of resuming a parental role "now or in the near future." (Iowa S.Ct. App. 579.)

Ms. Thompson described her relationship with the children. She said that she was the focus of their anger and that that

was fine. (Iowa S.Ct. App. 312.) She stated that their anger was based on the fact that she was a link to K.C. (Iowa S.Ct. App. 627.) She opined that the foster parents felt threatened by this link, and part of the children's attitude might be explained by loyalty to the foster parents. (Iowa S.Ct. App. 627.) She stated that at the outset they were not resentful or hateful to the natural mother. (Iowa S.Ct. App. 572.) She stated that they soon changed. (Iowa S.Ct. App. 572.) According to her, L.M. had told the children that they shouldn't have to put up with visits, and that their behavior soon began to reflect that. (Iowa S.Ct. App. 572-573.) In her opinion, the children still have feelings for K.C. (Iowa S.Ct. App. 575.) She discussed the children's attempted "suicide" (they bought sleeping pills at a convenience store) and said she took it seriously. (Iowa S.Ct. App. 639.) She admitted that the removal had led to the threats, but when asked if the removal was the problem, she stated that "I can't erase from my mind what . . . in my opinion led up to the problem, which was an alienation, in my opinion, by the foster parents of the children's feelings toward their natural mother." (Iowa S.Ct. App. 644.) She agreed, however, that the children should not be moved to punish the foster parents. (Iowa S.Ct. App. 644.)

Ms. Thompson testified about the foster parents. They had not received the training foster parents now receive, because they had their license prior to the existence of the law providing for such training. (Iowa S.Ct. App. 634-635.) The children were removed from their care because they were not supportive of the case plan. (Iowa S.Ct. App. 636.) She stated that from the beginning they resisted being told how things should be done in terms of visits and contact and reunification with the mother. (Iowa S.Ct. App. 637.) She implied that their attitudes had affected the children at a time at which the children were easily influenced. (Iowa S.Ct. App. 626-627.)

Ms. Thompson's testimony also indicated something of her



relationship with the guardian ad litem. It is clear that the former wishes to keep the children apprised of the goal of reunification, while the latter viewed that communication as threatening the children. (Iowa S.Ct. App. 615.) It is clear that the two engaged in heated discussions, during one of which the latter stated either that she would leave no stone unturned to keep the children from being returned to K.C., or that she stated she would leave no stone unturned before K.C.'s rights were terminated, depending on whose memory of the incident is clearer. (Iowa S.Ct. App. 609.) Finally, it is clear that this case evolved to the point where the former still believed that reunification with the parent was still a reasonable goal, while the latter saw the parent as an obstacle to be removed. (Iowa S.Ct. App. 329-330.)

Ms. Thompson's supervisor, Jerry Sawin, testified. He stated that the foster parents had consistently said one thing, and done another. (Iowa S.Ct. App. 686-687.) They had entered the children's life at a time when they were needy, and had really "hooked into them". (Iowa S.Ct. App. 687.) He stated that it would not be good to continue this kind of relationship. (Iowa S.Ct. App. 687.) He stated that he did not think it would be in the children's best interests to be adopted out, given his experience with adoptions that failed because of children later developing a concern about their natural parents. (Iowa S.Ct. App. 687.) Finally, he stated that, as a parent and a social worker, he felt it was inappropriate to allow ten- and eleven-year-olds to make life-altering decisions to the extent they had been encouraged to do in this case. (Iowa S.Ct. App. 687.) If termination occurred, he opined, the children's future would not be stable because of the presence of their natural fathers and the uncertainty of where they would be placed for adoption. (Iowa S.Ct. App. 689.) Mr. Sawin agreed and stated that the foster parents may have created some problems for these children by creating false hopes in them

(Iowa S.Ct. App. 715), and by placing inappropriate ties on them. (Iowa S.Ct. App. 704.)

K.C. testified. She acknowledged her mental illness and her need for her medicine. (Iowa S.Ct. App. 407.) She described her progress and her understanding of the value of friends, counseling and self-esteem. (Iowa S.Ct. App. 722.) She stated that she could live on her own now, but that she chose not to because she was told that, given the gap between she and her children, additional time would be preferable. (Iowa S.Ct. App. 732.) She stated that she would work very hard to restore the relationship with her children. (Iowa S.Ct. App. 733.) When asked if she felt the system had failed her, she said it had failed "us". (Iowa S.Ct. App. 733.) She then indicated that it was not the system that had failed her, but the foster parents and guardian ad litem. (Iowa S.Ct. App. 733.)

The trial court issued its order on January 2, 1987. (Iowa S.Ct. App. 807.) The court first found that service had not been properly made on the natural fathers, so termination of their rights could not occur. (Iowa S.Ct. App. 803.) The court dismissed the termination of parental rights petition against the mother finding, *inter alia*, that the best interests of the children require the continuance of a plan to place them with their mother. (Iowa S.Ct. App. 807.) Notice of appeal was filed on January 7, 1987. (Iowa S.Ct. App. 808.)

On January 8, 1987, the Department removed the children from the foster home in order to place them near their mother. (Iowa S.Ct. App. 812.) That plan had been endorsed by the court in its termination order. (Iowa S.Ct. App. 806.) On January 21, 1987, the guardian ad litem again requested that the Department be removed as custodian because of this move. (Iowa S.Ct. App. 812.) Shortly thereafter, attorneys for the guardian ad litem began filing pleadings in this case indicating that there was a lawsuit against their client regarding



the release of confidential information from the case, and that they needed to look at the transcripts. (Motion to Obtain Records, filed January 21, 1987.) The State did not resist the attorney's access to the transcripts. (Iowa S.Ct. App. 814-815.) However, the State did move for the removal of the guardian ad litem on the grounds that the lawsuit deprived her of her ability to exercise independent judgment on the children's behalf. (Iowa S.Ct. App. 814-815.) The motion was set for hearing along with a motion for a new evaluation of the children and a motion regarding the guardian ad litem's access to the children. (Iowa S.Ct. App. 942.)

At the hearing regarding access to the children, the executive director of the private agency caring for the children testified. (Iowa S.Ct. App. 872.) He stated that his agency had monitored contacts between the guardian ad litem and children in order to determine whether those contacts worked the children into a high emotional state. (Iowa S.Ct. App. 874.) The agency's intent was that the attorney-child relationship not be of a sort that would again force the children to choose sides. (Iowa S.Ct. App. 876.) The director wanted their current placement to be a "mediary" one. (Iowa S.Ct. App. 875.) These concerns were explained to the guardian ad litem and, according to the director, she had no resistance to the monitoring at the time. (Iowa S.Ct. App. 875-877.) The director's concern was that at the times of the meetings with the guardian ad litem the children became very aggitated, anxious, hyper and wrapped up in the legal proceedings. (Iowa S.Ct. App. 878.) He was concerned that at those meetings they were encouraged to keep their legal battles as their primary point of thought, and to view them as "their last hope". (Iowa S.Ct. App. 878.) This concern was also reflected in the agency's report which was submitted at the hearing (Iowa S.Ct. App. 899.) The report stated that the children's contact with the guardian ad litem focused on the media and legal/

political events in the case. (Pet. Ex. 1 of 2/16/87, p. 6.) The children were "taking literally", indications that they would return to the foster parents within the week. (Pet. Ex. 1 of 2/16/87, p. 6.) They then became frustrated when this didn't occur. (Pet. Ex. 1 of 2/16/87, p. 6.) The director opined that "there's no question that the continuation of the situation where they believe that something different is going to happen from what we understand to be the court order to be prevents them from moving on with their life." (Iowa S.Ct. App. 880.)

The director of clinical services at the private agency also testified. She related the incident where, after one visit with the guardian ad litem, the children came away expecting to be back in the foster home within one week, and were disappointed when that did not occur. (Iowa S.Ct. App. 903-904.) She stated that when media "events" about the case were not occurring, the children would go back to their schoolwork and lead normal lives. (Iowa S.Ct. App. 897.)

The court issued its ruling on the motion to remove the guardian ad litem on February 17, 1987. (Iowa S.Ct. App. 938.) The court granted the motion on two grounds. First, it found that "if the guardian ad litem could demonstrate that it was not possible to successfully reunite the children with their natural mother, it would tend to justify her use of any and all means necessary to the success of her efforts to prevent removal of the children from a previous foster home, and to effect the termination of their mother's parental rights." (Iowa S.Ct. App. 938.) Second, the court found the guardian ad litem had exposed the children to the exploitation of the news media, disclosed information to the press regarding the children's new homes in violation of a previous agreement, and had failed to encourage the children to adapt to their new homes and to reunification. (Iowa S.Ct. App. 939.) Furthermore, the court stated that her meetings with the children had the effect of wiping out all progress made with the chil-

dren and instilled them with false hopes and led to further disappointments. (Iowa S.Ct. App. 939.) The court concluded that their attorney appeared to be determined to act in a manner not in the children's best interests and ordered her removal. (Iowa S.Ct. App. 940.)

On November 25 of 1987, the Iowa Supreme Court issued its ruling in this matter. It ordered the termination of the mother's rights, but affirmed the trial court in all other respects. In February, 1988, the former guardian ad litem filed this petition.

### **SUMMARY OF ARGUMENT AGAINST GRANTING THE WRIT**

The decision of the Iowa Supreme Court regarding the constitutional rights of foster families is consistent with the majority of the precedent on the issue. Petitioner's vague allegations concerning the injustice of her removal as guardian ad litem do not raise an issue suitable for review by the United States Supreme Court.

#### **ARGUMENT AGAINST GRANTING THE WRIT**

- I. THE IOWA SUPREME COURT DID NOT ACT IMPROPERLY IN APPROVING THE REMOVAL FROM THE FOSTER HOME SO AS TO FACILITATE THE RETURN TO THE NATURAL PARENT.

In this case the trial court declined to interfere with the Iowa Department of Human Services' decision to remove these children from their foster home and to place them in another. (Iowa S.Ct. App. 235.) In a subsequent order, the court found that the foster parents had, within a few weeks of the chil-

dren's placement, resolved to obtain permanent custody of the children and had endeavored to obtain that objective. (Iowa S.Ct. App. 805.) It found that the foster parents had violated their obligations and trust as foster parents in order to gratify their own personal wishes to have children. (Iowa S.Ct. App. 806.) Accordingly, the trial court declined to transfer custody of the children from the Iowa Department of Human Services to the foster parents, and allowed the Department to effectuate its plan to move the children to foster homes that were physically closer to the natural mother, and which would be less disruptive of the children's then-existing relationship with her. (Iowa S.Ct. App. 235, 807.)

In approving this decision, the Iowa Supreme Court stated:

It should be apparent that one of the paramount needs of a child living under the stress of such unfortunate circumstances is to be free from direct or indirect proposals by those sheltering them to make the association permanent. To some it may seem innocent, even a good thing, to offer a permanent love to a child under temporary care. But unselfish temporary parents recognize that such bonding is not kind. On the contrary it tends to be selfish on the part of the adults and is highly likely to be harmful to the child.

Temporary foster relationships must be designed with the knowledge they will almost certainly end in separation. The children often return to their natural parents. Often another solution must be found. Separation from foster parents holds the potential to be a painful experience. Such a separation would become unnecessarily cruel if the foster parents have led the children to believe placement in their home was permanent.

We agree with the juvenile court's conclusion that it was in the best interests of the children to change their place-

ment from the [M.'s]. Parental rights of the mother were very much in issue at the time placement was ordered changed. The three fathers of the children were not yet subject to the court's jurisdiction. Options for the children's future had to be kept open. It was crucial that the children be under the care of foster parents who could and would refrain from seeking to bond a permanent relationship.

(Petition App. 12.) The court then made three key rulings, the latter two of which form the basis of this petition. Those rulings were:

1) that Iowa law does not create an expectation that a foster family relationship will be permitted to continue (Petition App. 14);

2) that there was no due process violation in moving the children from the foster home (Petition App. 13);

3) that the children were not denied equal protection under the law by said removal, because even under a strict analysis, the State has a compelling interest in removing the children from a foster home which is discouraging reunification with the natural parent. (Petition App. 15.)

The respondent State would assert that those constitutional holdings were appropriate, and in line with the majority of the precedent on these issues. Accordingly, review is not appropriate under Supreme Court Rule 17.1(b) and (c), as said holdings are consistent with, not in defiance of, the existing case law. Generally, case law holds that where state law does not provide foster parents with an expectation of keeping the foster family together, constitutional considerations do not either. *Kyees v. County Department of Public Welfare*, 600 F.2d 693, 698 (7th Cir. 1979); *Drummond v. Fulton County Department of Family & Children's Services*, 563 F.2d 1200, 1206-07 (5th Cir. 1977) (en banc), cert. denied, 437 U.S. 910, 98 S.Ct. 3103, 57 L.Ed.2d 1141 (1978); *Sherrard v. Owens*,

484 F.Supp. 728, 740-41 (W.D. Mich. 1980), *aff'd*, 644 F.2d 542 (6th Cir.) (per curiam), *cert. denied*, 454 U.S. 828, 102 S.Ct. 120, 70 L.Ed.2d 103 (1981); *Crim v. Harrison*, 552 F.Supp. 37 (N.D. Miss. 1982); *see also Backlund v. Barnhart*, 778 F.2d 1386 (1986) (suggesting Ninth Circuit is leaning towards this position). *Brown v. San Joaquin*, 601 F.Supp. 653 (E.D. Cal. 1985), is the exception, not the rule, and may be distinguished as it relied upon certain California statutes, which, unlike the Iowa Juvenile Code, clearly create in foster parents an expectation that their relationship with the child be preserved. 601 F.Supp. at 660.

The Iowa Supreme Court found that Iowa's state law does not provide foster parents with such an expectation. The weakness of petitioner's assertions to the contrary are demonstrated by the fact that, as proof of such an expectation, petitioner can only cite to a statute which gives a previous foster family the right to be considered as placements if return to the biological family is not contemplated. Iowa Code § 232.102(6). There is no statute or holding giving foster parents any such expectation when return to the natural parent is still a possibility. In fact, the Iowa Administrative Code precludes appeals of specific foster care placement issues. 441 IA:C. 7.5(5)(d).

The ruling of the Iowa Supreme Court was proper and is not a proper subject for review by this Court.

## II. THE PETITION DOES NOT ESTABLISH THAT THE IOWA SUPREME COURT DISREGARDED PRINCIPLES OF FEDERAL LAW REGARDING THE RIGHTS OF PERSONS IN STATE CUSTODY.

Under this division, the petitioner sets forth several general statements regarding the rights of children or other individuals, but does not apply those statements to any of the specific facts or findings in this case. Rather, the petitioner offers

generalized statements such as "juveniles have rights to freedom of expression" and leaves the Court the task of sifting through the thousand-page record of this two-year-old case in order to find facts or incidents to which such propositions apply. Obviously, response to this type of legal argument is difficult. The State's initial response must be that the setting forth of a string of largely unrelated legal propositions concerning federal rights does not, in and of itself, constitute an argument for the granting of Supreme Court review under Supreme Court Rule 17. Petitioner has not specified what rights have been violated, nor who has violated them. The Court is left in the dark as to whether any of the accusations made in this division relate to actual events, and, if they do, as to whether any of those events are recorded in the record. All the Court has to go by is the fact that the assertion of the rights was somehow precluded by removal of the guardian ad litem. The respondent State of Iowa would submit that the lack of specificity here should be fatal to the petition, as the argument does not provide the Court with any means of assessing whether important federal issues were raised in this case.

It can be argued, of course, that while the argument in Division II does not set forth any specific challenges to the Iowa court actions, it does implicitly contain certain vague assertions regarding the First and Sixth Amendment rights of juveniles, and does suggest that those rights were somehow violated in this case. These assertions seem to derive chiefly from the fact that this particular guardian ad litem was removed as the legal representative of the children in interest. It might, therefore, be useful to reiterate why that removal occurred. The trial court found that the guardian ad litem: 1) continually exposed the children to the news and entertainment media; 2) disclosed information regarding their new foster homes against the wishes of the court; 3) encouraged the children to focus on the media, legal and political events sur-



rounding the case rather than reunification with their natural parent; 4) encouraged the children to write their former foster home concerning problems in their new one; 5) effectively "wiped out" the children's progress towards stabilization with each visit; and 6) put the children in an adversarial position in their own neglect proceeding. (Iowa S.Ct. App. 939-940.) The court noted that the guardian ad litem maintained the right under the First Amendment to make any statement in public, regardless of the confidentiality that is normally maintained in juvenile cases. See Iowa Code §§ 217.30 and 232.147 (1985) (providing for confidentiality of social services and juvenile court information); See also 42 U.S.C. 671(8) (providing that states who operate federally funded foster care programs must restrict disclosure of information regarding individuals served by these programs.) The trial court ordered the removal of the guardian ad litem not because these activities violated legal and ethical standards, which they may have, but because these activities had the effect of harming the children before the court. (Iowa S.Ct. App. 939). See *Matter of Welfare of B.B.B.*, 393 N.W.2d 436 (Minn. App. 1986) (Minnesota case holding that standard for removal of guardian ad litem is best interest of the child.) Ultimately, this was a case where the children had to be protected from their legal representative. Accordingly, it is not a good case for examining the rights of foster care children vis-a-vis state agencies. Such an examination should be reserved for a case where the children's interests, as opposed to the guardian ad litem's interests or the foster parents' interests, are more adequately represented.

### III. THIS CASE DOES NOT PRESENT A CONTEXT FOR EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWERS.

It is difficult to respond to petitioner's argument under this issue. The heading makes reference to the supervisory powers



of the United States Supreme Court, but those powers are not referred to thereafter. What those powers are, and how they should be exercised, is not specified. Instead, general allegations of injustice are made without elucidation on how those allegations apply to the facts of this case, if they do at all. The two basic themes of the allegations seem to be: 1) that the Iowa juvenile justice system improperly favors the rights of natural families over those of foster families; 2) that the removal of the children's guardian ad litem was an improper sanctioning of an attorney who was zealously representing her clients. As the first theme has been dealt with in the first division of this brief, the respondent State of Iowa will focus on the second theme in this one.

As stated in the second division, the respondent State would assert that the removal of the guardian ad litem, which occurred long after the removal of the children from the foster home, was necessary. At the time, the trial court had before it the testimony of officials of the private agency caring for the children stating that the children became very anxious and agitated after meeting with their attorney. (Iowa S.Ct. App. 878.) That testimony indicated that the children left those meetings with the impression that they would be returning to the M. foster home within the week. (Iowa S.Ct. App. 878.) The children were apparently encouraged to focus on the guardian ad litem's legal battle to return them to the foster home, and to view that battle as their last hope. (Iowa S.Ct. App. 878-879.) This prevented them from living normal lives in the community, and from getting on with their activities and school work. (Iowa S.Ct. App. 897.)

The trial court also had before it the history of this case wherein children who had entered foster care with no particular animosity towards the mother who had mistreated them ended up requesting termination in open court, despite evi-

dence that allowing them to take sides in such a controversy was not in their best interest. (Iowa S.Ct. App. 416, 457, 572.) Furthermore, the trial court had before it the recommendation of an independent board overseeing Iowa foster care placements that the best interests of these children required removal of the guardian ad litem. (Report of Iowa Foster Care Review Board, dated February 12, 1987.)

Finally, the court had before it evidence that a lawsuit was occurring wherein the guardian ad litem might be forced to defend the release of arguably confidential information regarding her clients. A normal part of that defense would include stressing the inappropriateness of reunification and the need to resort to heavy publicity to prevent that eventuality. Therefore, the guardian ad litem would have a private legal and pecuniary interest in opposing reunification. Such an interest might interfere with advocacy of the children's best interests.

Those factors and others clearly indicate that the rulings of the trial court and Iowa Supreme Court on this issue were necessary to protect the five C. children and to protect the integrity of this particular juvenile action.

**CONCLUSION**

For those reasons, the petition for writ of certiorari should be denied. The factual peculiarities of this case render it an inappropriate vehicle for deciding the foster care issues left open in *Smith v. Organization of Foster Families*, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed. 2d 14 (1977).

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